

No. 08-1369

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Steven Broughton, Dr., (Originally
sued as a John Doe Defendant); Ravi
Mehta, Dr., (Originally sued as John
Doe Defendant),

Appellees.

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Submitted: May 15, 2009
Filed: June 8, 2009

Before WOLLMAN, MURPHY, and MELLOY, Circuit Judges.

PER CURIAM.

Arkansas inmate Kiara Smith appeals the district court's¹ adverse judgment in his 42 U.S.C. § 1983 action claiming deliberate indifference to his serious medical needs. Following careful review, we conclude that the district court did not err in dismissing Smith's claims following an evidentiary hearing, see Randle v. Parker, 48 F.3d 301, 303 (8th Cir. 1995) (de novo review), or in denying Smith leave to amend his complaint to add state law claims of outrage and civil conspiracy, see In re K-tel Int'l, Inc. Sec. Litig., 300 F.3d 881, 899 (8th Cir. 2002) (de novo review where denial of leave to amend is based on failure of amended complaint to state a claim). Because the district court declined to exercise supplemental jurisdiction over the state law medical malpractice claim, however, dismissal of that claim should have been without prejudice. See 28 U.S.C. § 1367(c)(3); Labickas v. Ark. State Univ., 78 F.3d 333, 334-35 (8th Cir. 1996) (per curiam).

¹The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable H. David Young, United States Magistrate Judge for the Eastern District of Arkansas.

Accordingly, the judgment is affirmed, see 8th Cir. R. 47B, but we modify dismissal of the state law medical malpractice claim to be without prejudice. We also deny Smith's pending motion.
